

Unofficial Draft Copy

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LC0038--revised

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising language related to economic credentialing of physicians and conflicts of interest among health care providers; requiring disclosure of investment interests and employment relationships; requiring notification of alternative care providers; defining conflict of interest for health care providers; requiring sharing of investigation reports between licensing boards and the department of public health and human services; regulating certain contracts among health care providers; providing enforcement; removing a termination date for economic credentialing; amending sections 37-1-302, 37-1-316, 37-1-135, 50-5-105, 50-5-117, and 50-5-207, MCA; repealing Section 6, Chapter 351, Laws of 2007; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Disclosure required. (1) (a)

Except as provided in subsection (1)(b), a health care practitioner shall disclose to a patient any investment interest in or employment relationship with a health care facility, excluding investment in the health care practitioner's own office.

(b) The provisions of subsection (1)(a) do not apply to a

patient seeking emergency care.

(2) A health care practitioner who makes referrals to a health care facility shall:

(a) provide written notification of under 100 words disclosing the investment or employment interest to the patient when making a referral;

(b) provide a list of alternative, effective, and licensed facilities or health care providers if they are available;

(c) inform the patient, either orally or through written means, that the patient has freedom to choose the health care provider or facility to obtain services; and

(d) assure the patient that the referring health care practitioner will not treat the patient differently depending on the patient's choice of health care practitioner or facility.

NEW SECTION. **Section 2. Primary responsibility -- contracts -- referrals -- definition.** (1) A health care practitioner's primary responsibility is the welfare and well-being of the patient in all situations except those in which the primary responsibility is to public health.

(2) (a) A health care practitioner may enter lawful contractual relationships, including the acquisition of ownership interests in health facilities, products, or equipment.

(b) A contractual relationship may not require referrals or an expected volume of referrals between parties to the contract and may not specify that referrals are a basis for remaining an investor or an employee.

(3) For the purposes of [section 1] and this section, the following definitions apply:

(a) A "health care practitioner" is a person licensed under Title 37, chapters 3 and 4, 6 through 17, 20 through 28, 34 through 36.

(b) A "referral" is a written or oral order from a health care practitioner to a patient or client for health care services, including:

(i) the forwarding of a patient to another health care practitioner or to a health care facility licensed under Title 50 or operated by a health care practitioner under Title 37 or to an entity that provides or supplies health services or health care supplies;

(ii) a request or establishment of a plan of care that includes the provision of health services or health care supplies; and

(iii) the information in [section 1(2)].

NEW SECTION. **Section 3. Primary responsibility.** The primary concern of any licensee under Title 50 must be the welfare of the patient except when public health takes precedence over the well-being of an individual.

NEW SECTION. **Section 4. Enforcement -- confidentiality -- definitions.** (1) (a) Upon receiving notification of a finding by a Title 37 health care licensing board of unprofessional conduct under 37-1-316(19), the department shall investigate to

determine:

(i) if the unprofessional conduct was by a health care provider employed by a health care facility licensed under Title 50; and

(ii) if the relationship in subsection (1)(a)(i) applies, whether the unprofessional conduct was related to undue influence employed by the health care facility, including whether the contract or employment agreement between the health care provider and the health care facility violated state or federal laws.

(b) If the department determines a health care facility used undue influence on a health care provider in violation of state or federal law, the department may take action as provided under 50-5-114.

(c) The department may investigate an economic credentialing complaint unrelated to an unprofessional conduct finding as provided in subsection (1)(a) and (b). The department may take action upon a finding that a health care facility has violated 50-5-117 as provided in [Title 5, chapter 5, part 1].

(2) Until the department takes action as provided under subsection (1)(a), the department shall maintain the confidentiality of investigation records obtained from a health care licensing board and from its own investigation.

(3) For the purposes of this section, the following definition applies:

(a) "Health care provider" means an individual licensed, certified, or otherwise authorized under Title 37, except for an individual licensed under Title 37, chapter 18, to provide health

care in the ordinary course of business or practice of a profession.

Section 5. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Conflict of interest" for the purposes of chapters 3 and 4, 6 through 17, 20 through 28, 34 through 36, plus 37-1-316, means a set of conditions in which a health care provider:

(a) exercises professional judgment concerning a patient's welfare that is unduly influenced directly or indirectly by a financial or investment interest;

(b) demonstrates an economically motivated referral pattern, as defined in 50-5-117;

(c) accepts, pays, or promises to pay a part of a fee in exchange for patient referrals;

(d) obtains any fee by fraud, deceit, or misrepresentation;
or

(e) pays or receives, indirectly or directly, any fee, wage,

commission, rebate, or other compensation for services not actually or personally rendered.

~~(3)~~(4) "Department" means the department of labor and industry.

~~(4)~~(5) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

~~(5)~~(6) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

~~(6)~~(7) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

~~(7)~~(8) "Profession" or "occupation" means a profession or occupation regulated by a board."

{ Internal References to 37-1-302:
37-1-138 x 37-35-301*x }

Section 6. Section 37-1-316, MCA, is amended to read:

"37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or

benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;

(11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate

precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

- (a) peer review committee;
- (b) professional association; or
- (c) local, state, federal, territorial, provincial, or Indian tribal government;

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the

scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

(19) for health care practitioners licensed under Title 37, chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36 a finding of conflict of interest detrimental to a patient's welfare and safety."

{ Internal References to 37-1-316:

37-1-319 x	37-1-320 x	37-3-348 x	37-35-301*x
37-35-301*x	37-35-301x	50-20-307x}	

Section 7. Section 37-1-135, MCA, is amended to read:

"37-1-135. Licensing investigation and review -- record access -- record sharing. (1) Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

(2) Notwithstanding other confidentiality requirements, a board that determines that a licensee under chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36, has engaged in unprofessional conduct under 37-1-316(19) shall report its findings and provide any related investigation reports and records to the department of public health and human services for investigation as provided under [section 4]."

{Internal References to 37-1-135: None.}

Section 8. Section 50-5-105, MCA, is amended to read:

"50-5-105. ~~(Temporary)~~ Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

~~(4) Except for a hospital that employs its medical staff, a~~

~~hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6 (Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)~~

~~50-5-105. (Effective July 1, 2009) Discrimination~~

~~prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.~~

~~(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.~~

~~(b) For the purposes of this subsection (2), the following definitions apply:~~

~~(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.~~

~~(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.~~

~~(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and~~

~~confidential professional relationship between a licensed physician and patient must continue and remain unaffected.~~

~~—— (4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.~~

~~—— (5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."~~

{ Internal References to 50-5-105: None. }

Section 9. Section 50-5-117, MCA, is amended to read:

"50-5-117. ~~(Temporary)~~ Economic credentialing of physicians prohibited -- definitions. (1) A hospital may not engage in economic credentialing by:

(a) except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations, requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital or to any facility related to the hospital;

(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an

ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan to a physician or a partner, associate, or employee of the physician because the physician or partner, associate, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(2) Notwithstanding the prohibitions in subsection (1), a hospital may:

(a) refuse to appoint a physician to the governing body of the hospital or to the position of president of the medical staff or presiding officer of a medical staff committee if a conflict of interest exists or the physician or a partner or employee of the physician provides medical or health care services at, ~~has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or~~

(b) exclude a physician member of the board, the president of the hospital medical staff, or presiding officer of a medical staff committee from hospital-related decisions and information if the physician member of the board, president of the hospital staff, or presiding officer of a medical staff committee has a

conflict of interest relevant to those decisions or that information.

(3) For the purposes of this section, the following definitions apply:

(a) "Economically motivated referral pattern" means a referral pattern that demonstrates consistent referrals based on a patient's health insurance coverage or ability to pay;

(b) (i) "Conflict of interest" means a situation in which a physician or an immediate family member as defined in 15-30-602, partner, or employee of the physician has a financial interest in any licensed health care facility that may compete directly with a hospital licensed under this title, chapter 5.

(ii) For the purposes of subsection (3)(b)(i), a financial interest exists if a person directly or indirectly holds through business or investment an ownership interest in any licensed health care facility that competes with a hospital licensed under this title, chapter 5.

(c) (i) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital on criteria other than the individual's education, training, current competence, experience, ability, personal character, and judgment.

(ii) This term does not mean use by the hospital of:

(i)(A) exclusive contracts with physicians, if the contracts do not violate the unfair trade practices act under Title 30, chapter 14, part 2;

(ii)(B) equitable medical staff on-call requirements;

(C) disciplinary actions upon a finding by the board of medical examiners, provided for 2-15-1731, that a physician or a physician group has engaged in economically motivated referral patterns;

~~(iii)~~ (D) adherence to a formulary approved by the medical staff; or

~~(iv)~~ (E) other medical staff policy adopted to manage health care costs or improve quality.

~~(b)~~ (d) "Health care facility" has the meaning provided in 50-5-101 ~~and includes diagnostic facilities.~~

~~(c)~~ (e) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer, multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

~~(d)~~ (f) "Physician" has the meaning provided in 37-3-102.

(4) For the purposes of this section, the provisions of 50-5-207 do not apply. ~~(Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)"~~

{ Internal References to 50-5-117: None. }

Section 10. Section 50-5-207, MCA, is amended to read:

"50-5-207. ~~(Temporary)~~ Denial, suspension, or revocation of health care facility license -- provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3, except 50-5-117, is violated.

(2) The department may reduce a license to provisional status if:

(a) as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2; or

(b) the department has determined through an investigation under [section 4] that a health care facility contributed to a finding of unprofessional conduct under 37-1-316(19) against a health care provider because of undue influence.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court.

~~(Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)~~

~~50-5-207. (Effective July 1, 2009) Denial, suspension, or revocation of health care facility license -- provisional~~

~~license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:~~

~~(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.~~

~~(b) The staff is insufficient in number or unqualified by lack of training or experience.~~

~~(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows~~

~~evidence of character traits inimical to the health and safety of patients or residents.~~

~~—— (d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.~~

~~—— (e) There is cruelty or indifference affecting the welfare of the patients or residents.~~

~~—— (f) There is misappropriation of the property or funds of a patient or resident.~~

~~—— (g) There is conversion of the property of a patient or resident without the patient's or resident's consent.~~

~~—— (h) Any provision of parts 1 through 3 is violated.~~

~~—— (2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.~~

~~—— (3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.~~

~~—— (4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court."~~

~~{ Internal References to 50-5-207: None. }~~

NEW SECTION. **Section 11. Repealer.** Section 6, Chapter 351, Laws of 2007, is repealed.

NEW SECTION. **Section 12. {standard} Codification**

instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 50, chapter 4, part 1, and the provisions of Title 50, chapter 4, part 1, apply to [section 3].

(3) [Section 4] is intended to be codified as an integral part of Title 50, chapter 5, part 1, and the provisions of Title 50, chapter 5, part 1, apply to [section 4].

NEW SECTION. **Section 13. {standard} Effective date.** [This act] is effective on passage and approval.

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